IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOVA OCULUS PARTNERS, LLC,
f/k/a THE EYE MACHINE, LLC
41865 Boardwalk Avenue, Suite 204
Palm Desert, CA 92211

PETER POCKLINGTON
170 Gold Canyon Drive
Palm Desert, CA 92211

LANTSON E. ELDRED
74-900 Highway 111, Suite 127
Indian Wells, CA 92210

AMC HOLDINGS CO., LLC
170 Gold Canyon Drive
Palm Desert, CA 92211

Plaintiffs,

vs.

U.S. FOOD AND DRUG ADMINISTRATION,

Civil Process Clerk
Office of the United States Attorney for the
District of Columbia
555 Fourth Street, NW
Washington, DC 20530,

William Barr
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

U.S. Food and Drug Administration
Division of Freedom of Information
Office of the Executive Secretariat, OC
5630 Fishers Lane, Room 1035
Rockville, MD 20857

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

For their complaint against the United States Food and Drug Administration ("FDA"), Plaintiffs allege as follows:

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to enjoin the FDA from improperly withholding agency records and to order the production of all improperly withheld agency records.

2. The records are responsive to Plaintiffs' FOIA Request ("Request") submitted to the FDA and modified as detailed below.

3. The FDA has failed to produce such responsive records.

Parties

4. Plaintiffs Nova Oculus Partners, LLC, f/k/a The Eye Machine, LLC and AMC Holdings Co., LLC are corporations incorporated in Delaware with principal place of business in California. Plaintiffs Peter Pocklington and Lantson E. Eldred are individuals with residence in California.

5. The FDA is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

Jurisdiction and Venue

6. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

Background

8. On July 15, 2019, Plaintiffs submitted the Request to the FDA via facsimile and Federal Express. A true and correct copy of the Request is attached as Exhibit 1.

9. On July 19, 2019, Paula Rohde, Senior Freedom of Information Specialist, Office of the Executive Secretariat, Division of Freedom of Information at the FDA, called Plaintiffs' counsel and requested releases from Plaintiffs. On July 22, 2019 at 6:37 PM EDT, Plaintiffs' counsel sent Plaintiffs' signed releases to Ms. Rohde. A true and correct copy of the e-mail and releases are attached as Exhibit 2.

10. On July 23, 2019, Ms. Rohde acknowledged receipt of the same. A true and correct copy of the e-mail correspondence is attached as Exhibit 3. The FDA did not assign a reference number to Plaintiffs' Request at that time as required.

11. In August 2019, Plaintiffs' counsel spoke with Paula Rohde regarding potential modification of Plaintiffs' Request based on the database systems available to the FDA. On August 27, 2019, Plaintiffs' counsel spoke with Katherine Yulle in the FDA Freedom of Information Office regarding modification of the Request.

12. On September 3, 2019 at 7:45 PM EDT, as directed by Ms. Yulle, Plaintiffs' counsel sent the modified Request by email to the FDA Freedom of Information Office. A true and correct copy of the email and modified Request are attached as Exhibit 4. The modified Request, which is the Request at issue, seeks the following records:

1. All emails from any and all of Kesia Alexander's email accounts, from the period of January 1, 2013 through the present, referencing:

    a. Nova Oculus Partners, LLC
    b. The Eye Machine, LLC
    c. Peter Pocklington
    d. Lantson E. Eldred
    e. AMC Holdings Co., LLC
    f. macular degeneration
    g. AMD

2. All emails from any and all of Elvin Ng's email accounts (including Elvin.Ng@fda.hhs.gov), from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington
d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

3. All emails from any and all of Bradley Cunningham's email accounts, from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington
d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

4. All emails from any and all of John R. Doucet's email accounts, from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington
d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

5. All emails from any and all of Maureen L. Dreher's email accounts, from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington
d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

6. All emails from any and all of Leonid Livshitz's email accounts (including Leonid.Livshitz@fda.hhs.gov), from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington

d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

7. All emails from any and all of Alexander Beylin's email accounts (including Alexander.Beylin@fda.hhs.gov), from the period of January 1, 2013 through the present, referencing:

a. Nova Oculus Partners, LLC
b. The Eye Machine, LLC
c. Peter Pocklington
d. Lantson E. Eldred
e. AMC Holdings Co., LLC
f. macular degeneration
g. AMD

See id.

13. On September 9, 2019, the FDA sent via email an acknowledgement letter and assigned the Request Reference No. 2019-8255. *See* Exhibit 5.

14. Plaintiffs' Request, which was submitted on July 15, 2019, was tolled only once for three business days when the FDA requested additional information on Friday, July 19, 2019 and received such information after business hours on Monday, July 22, 2019. Accordingly, the FDA has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i). *See also* 5 U.S.C. § 552(a)(6)(A)(ii)(I).

COUNT I - FAILURE TO COMPLY WITH FOIA

15. Plaintiffs incorporate each of the foregoing paragraphs of this Complaint.

16. Pursuant to FOIA, 5 U.S.C. § 552(a), Plaintiffs have a statutory right to access the requested agency records.

17. The FDA has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

18. The FDA, by and through its component agencies, has improperly withheld agency records responsive to Plaintiffs' Request.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment for Plaintiffs and award the following relief:

a. Enjoin the FDA from withholding the requested records and order the FDA to produce those records to Plaintiffs in accordance with FOIA, 5 U.S.C. § 552;

b. Expedite the proceedings in this action;

c. Award Plaintiffs their costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

d. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

October 1, 2019

/s/ Lisa Norrett Himes

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